IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12469 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARESKHKUMAR RATILAL SAXENA

Versus

GENERAL MANAGER (HRD)

Appearance:

1. Special Civil Application No. 12469 of 2000

MR MUKESH H RATHOD for Petitioner No. 1

RULE SERVED for Respondent No. 1,3-4

MR DR DAVE for MR AD OZA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 15/04/2004

ORAL JUDGEMENT

In this petition, the petitioner's grievance is that on account of negligence of the Gujarat Electricity

Board ("G.E.B." for short), he was prevented from appearing in the trade test held on 27th October, 1984 and as a result thereof, he could not be appointed on the post of Junior Assistant. He has, therefore, prayed that the G.E.B. should be directed to appoint him on the post of Junior Assistant with retrospective effect from 1st January, 1985 and also to pay wages and all other consequential benefits.

1.1. It is the say of the petitioner that he was appointed as Apprentice at Veraval in the year 1983. After completing Apprenticeship training, he was required to appear in the trade test for being appointed on the regular establishment of G.E.B. The test was scheduled to be held on 27th October, 1984. The petitioner on that day went to appear in the test, but he was prevented from doing so on the ground that his name did not appear in the list which was already displayed on the notice board. He thereafter made representations and also entered into some correspondence with the G.E.B. and in response to the same, the G.E.B. informed him that unless the contract was registered with Apprenticeship Board, his name would not appear in the list. It also transpires that G.E.B. had received the contract vide letter dated 7th October, 1986. The G.E.B. duly forwarded a copy of the contract registered by the said Apprenticeship Advisor to the petitioner by Registered Post A.D. dated 10th July, 1987. It appears from the record of this petition that the trade test is being held at regular intervals. According to the petitioner, he was being assured by the G.E.B. that he would be permitted to appear in the examination, but that did not happen and he was wrongfully denied the chance of being appointed as Junior Assistant. It further appears that the petitioner was ultimately appointed as a meter reader vide letter of appointment dated 2nd May, 1994. It also appears that in the year 1999, he was offered promotion to the post of Junior Assistant but the petitioner vide his letter dated 21st January, 1999 expressed his unwillingness to accept the promotion since according to him, there were adverse family circumstances. It is the say of the petitioner that since default was of the G.E.B. it should have been directed to appoint him on the post of Junior Assistant with effect from 1st January, 1985 together with all the incidental benefits.

1.2. The say of the respondent is that in accordance with the requirement which is of the Apprenticeship Rules, 1991, it had already forwarded the contract of the petitioner to the Apprenticeship Board and copy of the registration was also forwarded to the petitioner.

Ofcourse, as it transpires from the affidavit-in-reply, the contract was forwarded to the said office sometime in the year 1986, which was registered on 7th October, 1986. The petitioner was duly intimated about this fact and also given a copy of the Registration of his contract. So far as the G.E.B. is concerned, its duty ended with the registration of the contract.

1.3. Since the grievance of the petitioner is with regard to preventing him from appearing in the trade test, it would be desirable to turn to the said provision. Section 21 of the Apprenticeship Act, 1961 deals with holding of test and grant of certificate and conclusion of training. It reads as under :-

"21. Holding of test and grant of certificate and conclusion of training :-

(1) Every (trade apprentice) who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has [undergone his apprenticeship training].

(2) Every (trade apprentice) who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council.

(3) The progress is apprenticeship training of every graduate or technical apprentice [technician (vocational) apprentice] shall be assessed by the employer from time to time.]

(4) Every graduate or technical apprentice or technician (vocational) apprentice, who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.]"

2. Thus, it is the duty of the National Council to hold/conduct the test to determine the proficiency of the designated trade apprentice who has completed the period of training. So far as the petitioner is concerned, he was prevented from appearing in this test. The

petitioner holds the G.E.B. responsible for not permitting him to appear in the trade test. It may be noted here that Section 22 of the Act deals with offer and acceptance of the employment. The said Section provides that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept the employment under the employer. A conjoint reading of both the Sections gives a picture that it was for the petitioner to take necessary steps for appearing in the trade test after his contract was registered with Apprenticeship Board. From the record of the petition, it appears that he did not take any concrete steps except to do unnecessary correspondence with the G.E.B. It is an admitted position that apprentice is being given six chances to clear the test. In the present case, if the petitioner had missed one chance, he could have certainly availed of the subsequent chances. That has not been done. He throws blame on the G.E.B.

2.1. According to Mr. Mukesh Rathod learned advocate appearing for the petitioner, it was the G.E.B.'s glaring mistake in not forwarding the contract to the said Apprenticeship Board. According to him, had the G.E.B. been vigilant, he would have appeared in the test and cleared it.

2.2. As against that, the contention of Mr. D. R. Dave learned advocate appearing for Mr. A.D. Oza for the respondent is that the petitioner was duly forwarded the Registration of the contract. It was his duty, to take follow up action. He has not done it. He, therefore, cannot find fault with the G.E.B. He has further submitted that the petition is also filed at much belated stage, hence the relief which has been prayed for in the petition now cannot be granted.

3. The record of the petition shows that trade test was taken in the year 1984, and the petitioner was prevented from appearing in the test as his name was not included in the list. There were subsequent chances available for him. When all the requirements were complied with by the G.E.B. it was the duty of the petitioner to appear in the test and to clear it. That has not been done by him. He now cannot find fault with the G.E.B. It may also be noted here, that in the year 1999, he was offered promotion to the post of Junior Assistant, but he declined to accept it. It is only in the year 2000, the petitioner has approached this Court

with a prayer that he ought to have been appointed as Junior Assistant in the year 1984. He has, therefore, sought benefit of the said appointment with retrospective effect i.e. from 1985 onwards and has claimed all the monetary benefits. It is difficult to understand that why the petitioner waited so long for seeking redressal to his grievance. Not only that, but when actual post was offered to him by way of promotion, he declined to accept it. If that be so, it is very clear that he had relinquished his right to have that benefit. The present petition also appears to have been filed by the petitioner to gain some monetary benefit, since, in the very next year, i.e. in the year 2000, he has demanded appointment on the post of Junior Assistant with effect from 1st January, 1984 together with all the consequential benefits. No plausible explanation is coming forth, why he did not approach this Court earlier. Not only that even on merits, there does not appear to be any default committed by the respondent. It is also required to be noted that by virtue of Section 22, the employer is under no obligation to give appointment to the apprentice who has completed training. Even the Board was, therefore, not under any obligation to grant him appointment on the post of Junior Assistant in the year 1984.

For the reasons stated above, this petition has no merit and it is ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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